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Just Another Climate Conference

by Annalisa Savaresi*

Representatives of Parties to the UN Framework Convention on Climate Change (UNFCCC) gathered in Warsaw with a range of observers for the 19th Conference of Parties (CoP-19) from 11–23 November 2013. Following the havoc in South-east Asia caused by super-typhoon Haiyan and in light of the content of the early-released preliminary findings of the Fifth Report of the IPCC,¹ according to which “it is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century”, spirits were low, even by the standards of a climate conference.

Controversy surrounding the credibility of the Polish presidency was apparent even before the meeting started, with numerous NGOs criticising the conference’s hosts for their coal- and shale-gas-friendly energy policies.² While not much was expected from CoP-19, the agenda for the meeting was crowded with old and new contentious questions, including institutional arrangements to address loss and damage associated with climate change impacts; and a proposal to address decision making in the UNFCCC process put forward by the Russian Federation. In particular, delegates had to grapple with arrears in the

work of one of its subsidiary bodies, the Subsidiary Body for Implementation (SBI), which had been unable to hold its regular meeting in June, due to a dispute over matters of procedure³ and to attempt to resolve that dispute.

After a fortnight of particularly intense negotiations that already during the first week extended sessions well into the night, the meeting concluded one day later than initially scheduled. At its conclusion, CoP-19 had adopted 40 decisions, dealing with a wide range of issues, but leaving many others unresolved. This report provides an overview of the outcome of the meeting, highlighting its main achievements and shortcomings.

Durban Platform for Enhanced Action: Much Effort and Little Progress

At CoP-19, the third part of the second session of the negotiation platform known as the Durban Platform for Enhanced Action (ADP) was held. Many waited with trepidation to see whether this session would deliver some progress towards developing “a protocol, another legal instrument or a legal outcome” applicable to “all Parties”, to be adopted by 2015 and implemented from 2020.⁴ It had been hoped that the ADP would start working on this in earnest in 2013, after the closure of its embattled predecessor, the Ad Hoc Working Group on Long-term

* Ph.D., Research Fellow, University of Edinburgh and regular contributor to *EPL*.

Cooperative Action under the Convention (AWG-LCA).

Earlier meetings in 2013, however, had proven that the ADP was very much weighted down by the divisions that characterised the AWG-LCA.⁵ Negotiations in Warsaw did not do much better, featuring entrenched divisions, and risking virtual paralysis.

At CoP-19, the ADP continued to operate under two separate workstreams: one addressing the elements and modalities of the 2015 agreement; and the other on enhancing the level of ambition for the pre-2020 period. Unfortunately only limited progress was made on both fronts. The Co-chairs struggled to make delegates adhere to a more structured framework for discussion, as long-standing divisions over the interpretation to be given to Parties' differentiated responsibilities were reiterated, in a litany of familiar statements which provided a further demonstration of how difficult it is to reach consensus in a highly polarised process, where Parties have to struggle to find any common ground. Only after several long nights and a whole additional day spent in informal consultations, did delegates manage to reach a hard-won compromise over a lean decision which, though certainly more elaborate than the two paragraphs agreed at CoP-18, falls short of setting a clear path to the adoption of a new climate agreement in 2015, and to increasing the level of ambition pre-2020.



COP-18 President Abdullah bin Hamad Al-Attiyah (Qatar) handing over the ceremonial gavel to CoP-19 President Marcin Korolec (Poland)

Courtesy: IISD/Earth Negotiations Bulletin

In three pages, the ADP is requested to “accelerate its development” of the 2015 Agreement, and to “further elaborate, beginning at its first session in 2014, elements for a draft negotiating text including, *inter alia*, on mitigation, adaptation, finance, technology development and transfer, capacity-building and transparency of action and support”.⁶ While a more detailed list of such elements was discussed in Warsaw, the list was eventually expunged from the text in the last hours of feverish informal consultations. Parties are instead invited to “initiate or intensify domestic preparations for their intended nationally determined contributions”, and to communicate them ahead of CoP-20 – or by the first quarter of 2015 for those Parties “ready to do so”.

As far as pre-2020 ambition is concerned, the ADP's decision was equally generic, reiterating invitations to Parties to communicate quantified economy-wide emission

reduction targets, and to increase technology, finance and capacity-building support.⁷ The ADP has scheduled extra sessions for 2014, the first of which will take place in Bonn in March 2014, and a high-level ministerial dialogue to be held in conjunction with the subsidiary bodies' meeting in Bonn in June. These additional efforts are aimed at smoothing the path towards the climate summit to be organised by the United Nations Secretary-General in September 2014 to mobilise action and ambition in relation to climate change. However, after so much effort and such limited progress at CoP-19, the ADP negotiations in 2014 appear to face bleak prospects.

The Warsaw International Mechanism on Loss and Damage

For developing countries, one of the most important issues for negotiation in Warsaw related to the need for institutional arrangements to address loss and damage associated with climate change impacts. The inclusion of this item in the agenda for CoP-19 had prompted hopes that it would open the way to the provision of “new, predictable, and reliable financial support for the assessment of, and responses to, loss and damage”.⁸ Negotiations on this issue proved to be extremely contentious. Initially, this item was placed on the agenda of the SBI; however, it eventually had to be taken up in ministerial consultations, which did not conclude until the very closing hours of the meeting.

The decision emerging from this febrile consultative process established the “Warsaw international mechanism on loss and damage”, as a tool to enhance knowledge and understanding, strengthen dialogue, coordination, coherence and synergies, and enhance action and “support, including finance, technology and capacity building”.⁹ To the disappointment of developing countries, the mechanism was established under the Cancun Adaptation Framework, although a preambular reference added at the last minute specifically mentions that “loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation”.¹⁰ Far from being a mere matter of semantics, the configuration of loss and damage as an issue separate from mitigation and adaptation is potentially heavily laden with important legal consequences, including the possibility of opening the way to compensation for damage caused by climate change.¹¹ At present this possibility seems rather remote. Nevertheless, Parties agreed to review the Warsaw international mechanism on loss and damage by CoP-22, including “its structure, mandate and effectiveness”.¹²

UNFCCC Decision Making

Another potentially explosive issue at CoP-19 concerned decision making in the UNFCCC process. This agenda item was embodied in a proposal submitted

by the Russian Federation in October 2013,¹³ which, *inter alia*, drew attention to the need to “re-build confidence in the UNFCCC”, after “serious procedural and legal flaws”, specifically noting that the “frequency of dubious proceedings [is] acquiring alarming magnitude and the conduct of business [is] deviating more and more from the Draft Rules of Procedure, as well as working practices of the United Nations system, core provisions of the Charter of the United Nations and basic principles of international law, such as the principle of sovereign equality”.¹⁴

Incidents in which CoP Presidents have virtually ignored some Parties’ opposition to a particular item, in their zeal to facilitate the formation of consensus have not been uncommon in the history of the UNFCCC. The most recent such episode occurred at CoP-18 in Doha, when the Russian Federation, Belarus and Ukraine tried to block the adoption of the outcome decision of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), and subsequently protested against what they alleged was the Presidency’s violation of the Rules of Procedure in the course of its adoption.¹⁵ After the same countries unsuccessfully attempted to insert the issue into the agenda of the scheduled June 2013 meeting of the SBI, creating a level of contention so intense that it completely blocked the work of that body, delegates agreed to formally include this item on the agenda for CoP-19.¹⁶

Discussions were animated, showing that this matter is close to the heart of many Parties, not only the Russian Federation. Some delegates emphasised the need to understand the meaning of consensus, to clarify the role of the presiding officer and of the UNFCCC Secretariat, and, more generally, to establish a clear legal environment, that does not tolerate this type of deviation. Numerous Parties agreed that there was a need to ensure respect for the sovereignty of all Parties, as well as to safeguard the inclusiveness, legitimacy and transparency of CoP deliberations and decisions, recalling CoP-15 in Copenhagen as a negative example. Others called for revisiting recent practices that favoured the adoption of “take it or leave it” packages of decisions.¹⁷

Like other MEAs, the UNFCCC has not been able to formally adopt its rules of procedure, because of lack of consensus on certain rules of voting – an issue that is unlikely to be solved by the current troubled process. While at CoP-19, however, some convergence emerged on the timeliness of discussions to increase the effectiveness of negotiations; and several delegates expressed concern over the sacrifice of inclusiveness in the quest for effectiveness. While some delegations favoured the adoption of a decision on this issue at CoP-19, Parties could not reach an agreement and open-ended informal consultations on this thorny matter will continue in 2014.

The Warsaw REDD+ Framework

After unexpected progress at the 38th meeting of the UNFCCC’s Subsidiary Body for Scientific and Technological Advice (SBSTA-38) in June,¹⁸ many opined that CoP-19 would be a “REDD+ CoP”.¹⁹ The 2007 Bali Action Plan included a call for “policy approaches and positive incentives on issues relating to reducing emissions

from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries” (more commonly known by the acronym REDD+).²⁰ Throughout the life of the AWG-LCA, UNFCCC Parties have struggled to agree on the means of putting REDD+ into practice, in the end only managing to adopt a handful of decisions on the matter, without providing any clear and definitive internationally coordinated rules on how to carry out REDD+ activities. With the closure of AWG-LCA, REDD+ concerns remained, including the choice of the most appropriate forum to continue negotiations on this component of the climate regime, an element that was relatively uncontroversial but nevertheless hardly developed.²¹

CoP-19 managed to “leap forward” on REDD+, reflected in the adoption of seven decisions on REDD+ finance, institutional arrangements and methodological issues. These decisions have been collectively referred to as the “Warsaw REDD+ Framework”. While some of the methodological issues addressed had been recommended by SBSTA-38 and needed only to be formally adopted, CoP-19 had to deal with the particularly contentious matters of finance and institutional arrangements, admittedly, the most important and divisive pieces of the puzzle, in order to complete the REDD+ framework.

The Warsaw REDD+ Framework included decisions on both these issues, although they are hardly groundbreaking and may rather be regarded as an acknowledgement of the *status quo*. Although negotiations on REDD+ under the UNFCCC continued at a slow pace, numerous developing countries have made voluntary pledges to reduce their emissions in the forest sector, undertaking reforms with the assistance of international initiatives to facilitate so-called “REDD+ readiness”, most prominently the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD) and the Forest Carbon Partnership Facility (FCPF). As a result, the REDD+ readiness process has become a complex of international standards and bilateral endeavours, carried out beyond the institutional scope of the UNFCCC.²² The debate on REDD+ institutional arrangements and finance at CoP-19 was largely focused on how to bring these diverse processes under the guidance of the UNFCCC.

On institutional arrangements, while suggestions had been made to establish a specialised body under the UNFCCC in charge of coordinating support for the implementation of REDD+ activities, Parties merely agreed to “invite” interested Parties to designate national entities or focal points; and to “encourage” them to collectively meet with relevant entities financing REDD+ activities on a voluntary basis, in conjunction with the sessional period meetings of the subsidiary bodies.²³

On finance, Parties reiterated, in line with their previous decisions, that results-based finance provided to developing-country Parties for the full implementation of REDD+ activities may come from a variety of sources, public and private, bilateral and multilateral, including alternative sources. They further agreed that developing countries seeking results-based payments should provide

the most recent summary of information on how all safeguards have been addressed and respected. Lastly, an information hub was established as a means of publishing information on the results of REDD+ activities and corresponding results-based payments.²⁴

Whether these developments have laid sufficiently firm grounds to allow the further development of REDD+ activities within the framework of the UNFCCC remains to be seen. Given sluggish progress on other items on the negotiation agenda for CoP-19, however, it is hardly surprising that CoP-19 has hailed this modest outcome embedded in the Warsaw REDD+ Framework as a considerable success.

Unfinished Business

Numerous items on the agenda for CoP-19 were left unfinished. These included some outstanding technical questions concerning the second commitment of the Kyoto Protocol; the contentious issue of so-called “response measures”; the roles of market and non-market mechanisms; and review of the modalities and procedures for the Clean Development Mechanism. Some of these issues have been on the negotiation agenda for some time and reaching consensus has long been a challenge. Others, like agriculture, have been included on the negotiation agenda only recently, but failed to garner consensus for internationally coordinated action.²⁵ Items concerning relations with other international regimes, such as the UNFCCC’s role in the Montreal Protocol debate over phasing out hydrofluorocarbons, and the role of intellectual property rights in technology transfer, are so contentious that they appear to have become effective taboos.

Another important area where lack of progress was palpable was the never-ending debate on long-term finance. Since CoP-15, Parties have been discussing developed countries’ fulfilment of their pledge to mobilise jointly US \$ 100 billion dollars a year by 2020 to address the needs of developing countries.²⁶ While some Parties in Warsaw pledged funding for the Adaptation Fund established under the Kyoto Protocol, for the Least Developed Countries Fund²⁷ and for REDD+ finance, little substantial progress was made on the capitalisation of the Green Climate Fund (GCF), which has been expected to become the main instrument for the transfer of finance under the Convention. The CoP-19 decision merely agreed to request developed-country Parties to prepare biennial submissions on their updated strategies and approaches for scaling-up climate finance from 2014 to 2020,²⁸ calling also for “ambitious and timely” contributions to enable the operationalisation of the GCF.²⁹

More generally, CoP-19 in Warsaw may be regarded as the last in a series of meetings in which Parties to the UNFCCC failed to take significant action, increasing the level of ambition towards achievement of the objective of stabilising greenhouse-gas concentrations in the atmosphere “at a level that would prevent dangerous anthropogenic interference with the climate system”.³⁰ In spite of growing scientific clarity over the impacts of anthropogenic climate change, and of policies that may be deployed to counter them, the international climate regime continues to lack

the political will necessary to effect urgently needed internationally coordinated action to tackle climate change. If anything, the UNFCCC process is becoming increasingly sclerotic, with some Parties backtracking on Kyoto Protocol commitments and others refusing to face up to the changed realities of global emission patterns, which have seen some developing countries overtaking developed ones in their global emissions levels. The road to the adoption of a climate agreement in Paris in 2015 seems steep.

Notes

1 IPCC. 2013. *Climate Change 2013: The Physical Science Basis. Summary for Policymakers*. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. [Stocker, T.F., Qin, D., Plattner, G.-K., Tignor, M., Allen, S.K., Boschung, J., Nauels, A., Xia, Y., Bex, V. and Midgley, P.M. (Eds)]. Cambridge and New York NY: Cambridge University Press. Available at http://www.climatechange2013.org/images/uploads/WGI_AR5_SPM_brochure.pdf.

2 See, for example, Horn, C. 2013. “Beyond ‘Coaland’: Poland hosts COP 19”. *Compass*, 21 November 2013, at <http://sierraclub.typepad.com/compass/2013/11/beyond-coaland-poland-hosts-cop-19.html>.

3 See EPL 43(4-5): 188–189.

4 Decision 1.CP/17, at 2 and 4.

5 See EPL 43(3): 127–129; and *supra*, note 3.

6 Decision -/CP.19, “Further advancing the Durban Platform”, at 2(a)–(b).

7 *Ibid.*, at 4(a)–(c).

8 “Input from the G77 & China in preparation for COP19 on loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change”, at 6.

9 Decision -/CP.19, “Warsaw international mechanism for loss and damage associated with climate change impacts”, at 5(a)–(c).

10 *Ibid.*, preambular paragraph 4.

11 Hyvarinen, J. 2013. “Loss and damage, transitional justice, and reconciliation”. *Outreach*, at <http://www.stakeholderforum.org/sf/outreach/index.php/previous-editions/cop-19/200-cop19wrapup/11645-loss-and-damage-transitional-justice-and-reconciliation>.

12 *Supra*, note 9, at 15.

13 “Decision making in the UNFCCC process. Proposal for inclusion of additional sub-item on the provisional agenda for the nineteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change”. FCCC/CP/2013/INF.3.

14 *Ibid.*, at 5.

15 Akanle Eni-ibukun, T., Allan, J., Antonich, B., Appleton, A., Kosolapova, E., Kulovesi, K. and Recio, E. 2012. “Summary of the Doha Climate Change Conference: 26 November–8 December 2012”. *Earth Negotiations Bulletin*, Vol. 12, No. 567, 11 December 2012, at <http://www.iisd.ca/vol12/enb12567e.html>.

16 See EPL 43(4-5): 18–187.

17 Allan, J., Antonich, B., Bisiaux, A., Kosolapova, E., Kulovesi, K., Luomi, M. and Savaresi, A. 2013. “Summary of the Warsaw Climate Change Conference: 11–23 November 2013”. *Earth Negotiations Bulletin*, Vol. 12, No. 594, 26 November 2013, at <http://www.iisd.ca/vol12/enb12594e.html>.

18 *Supra*, note 16.

19 Interview with Prof. Christina Voigt (Norway), available at <http://www.iisd.ca/videos/climate/cop19>.

20 Decision 1/CP.13, “Bali Action Plan”, at 1(b)(iii).

21 See EPL 43(1): 18–21, at 19.

22 Savaresi, A. 2013. “Climate Change and the International Forest Regime. A REDD Revolution?” *Carbon and Climate Law Review* 2: 144–149.

23 Decision -/CP.19, “Coordination of support for the implementation of activities in relation to mitigation actions in the forest sector by developing countries, including institutional arrangements”, at 1 and 4.

24 Decision -/CP.19, “Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70”, at 1, 4 and 9.

25 *Cf. e.g.*, Neufeldt, H. *et al.* 2013. “Bridging the Gap I: Policies for reducing emissions from agriculture”. In: UNEP. *The Emissions Gap Report 2013*. A UNEP Synthesis Report. Nairobi: UNEP. Available at <http://www.unep.org/pdf/UNEPemissionsGapReport2013.pdf>.

26 Decision 2/CP.15, Copenhagen Accord, at 5.

27 [See p. 298. *Editor*].

28 Decision -/CP.19, “Work programme on long-term finance”, at 10.

29 Decision -/CP.19, “Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund”, at 13.

30 UNFCCC, Article 2.

